

AMENDED IN ASSEMBLY JULY 5, 2005

AMENDED IN SENATE APRIL 12, 2005

SENATE BILL

No. 423

Introduced by Senator Simitian
(Coauthor: Assembly Member Pavley)

February 17, 2005

~~An act to amend Section 42475.4 of the Public Resources Code, relating to electronic waste. An act to add Article 10.2.2 (commencing with Section 25214.8.5) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 423, as amended, Simitian. ~~Electronic waste: recycling. Hazardous waste: mercury relays and switches: exemption.~~

(1) Existing law prohibits, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat, as defined, unless the mercury-added thermostat meets specified criteria. A violation of the hazardous waste control laws is a crime.

Assembly Bill 1415 of the 2005-06 Regular Session of the Legislature, if enacted, would generally prohibit a person from selling, offering to sell, or distributing for promotional purposes in this state, a mercury switch or mercury relay, as defined.

This bill would define the terms "mercury relay" and "mercury switch" and would authorize a manufacturer selling a mercury switch or mercury relay, or a person selling a product that contains a mercury switch or a mercury relay, to apply to the Department of Toxic Substances Control for an exemption from the prohibition on the sale or distribution of a mercury switch or mercury relay proposed by AB 1415. The bill would specify the information required to be

included in the exemption application and would require the manufacturer to pay a fee set by the department pursuant to a specified procedure to pay for the costs of reviewing and approving an exemption, including requiring the manufacturer to pay the fee on behalf of a seller who applies for on an exemption. The bill would prohibit the department from granting an exemption until specified conditions are met with regard to the review of the fee by the Department of Finance. The bill would require the department to deposit the fee revenues received in the Hazardous Waste Control Account in the General Fund and would authorize the department to expend the fee revenues, upon appropriation by the Legislature, to review and approve exemption requests.

The bill would authorize the department to grant an exemption for a mercury switch or mercury relay if the department makes specified findings, including that a system exists for the proper collection, transportation, and processing of the product that contains the mercury switch or mercury relay at the end of its useful life. The bill would also authorize the department to renew an exemption, as specified, for a period no longer than 2 years.

The bill would also exempt, from that proposed prohibition, a mercury switch or a mercury relay that contains less than 1 milligram of mercury, is hermetically sealed by the manufacturer, and is intended for industrial use in test and measurement instruments or systems for monitoring and control applications. The bill would also exempt, from the proposed prohibition, the resale of an imaging and therapy system utilized for medical diagnostic purposes that includes a mercury switch or relay switch integrated in, and not physically separate from, other components of the larger product, if the mercury switch or mercury relay is manufactured prior to December 31, 2006.

The bill would impose a state-mandated local program by imposing new requirements upon a manufacturer of a mercury relay or switch, with regard to the payment of fees, the violations of which would be a crime pursuant to other provisions of law.

The bill would only become operative if AB 1415 of the 2005-06 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2006, and adds Section 25214.8.4 to the Health and Safety Code.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Electronic Waste Recycling Act of 2003, requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. Under existing law, the fees are deposited in the Electronic Waste Recovery and Recycling Account, and are continuously appropriated for the California Integrated Waste Management Board to make electronic waste recovery payments to cover the net cost of an authorized collector in operating a free and convenient system for collecting, consolidating, and transporting covered electronic wastes, and to make electronic waste recycling payments to cover an e-waste recycler's net cost of receiving, processing, and recycling covered electronic waste. Existing law requires the board to annually establish and update, as necessary, statewide electronic waste recycling goals.~~

~~This bill would require the board to establish and update those goals in consultation with the Department of Toxic Substances Control.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.2.2 (commencing with Section
2 25214.8.5) is added to Chapter 6.5 of Division 20 of the Health
3 and Safety Code, to read:

4
5 Article 10.2.2. Mercury Switches And Relays Exemption
6 Procedure
7

8 25214.8.5. For purposes of this article, the following
9 definitions shall apply:

10 (a) "Mercury relay" means a mercury-added product or
11 device that opens or closes electrical contacts to effect the
12 operation of other devices in the same or another electrical
13 circuit "mercury relay" includes, but is not limited to, a mercury
14 displacement relays, mercury wetted reed relays, or mercury
15 contact relay.

1 (b) (1) “Mercury switch” means a mercury-added product or
2 device that opens or closes an electrical circuit or gas valve.

3 (2) A mercury switch includes, but is not limited to, mercury
4 float switches actuated by rising or falling liquid levels, mercury
5 tilt switches actuated by a change in the switch position, mercury
6 pressure switches actuated by a change in pressure, mercury
7 temperature switches actuated by a change in temperature, and
8 mercury flame sensors.

9 25214.8.6. (a) (1) A manufacturer selling a mercury switch
10 or mercury relay, or a person selling a product that contains a
11 mercury switch or a mercury relay, may apply to the department
12 pursuant to this section for an exemption from Section 25214.8.4.

13 (2) An application for an exemption pursuant to this section
14 shall include all of the following information:

15 (A) Documentation for the basis for the requested exemption
16 or renewal of exemption, based on criteria described in
17 subdivision (c).

18 (B) A description of how the manufacturer will ensure that a
19 system exists for the proper collection, transportation, and
20 processing of the switch or relay containing mercury at the end
21 of its useful life.

22 (C) Documentation of the readiness of all necessary parties to
23 perform as intended in the planned system.

24 (3) A manufacturer who applies for an exemption pursuant to
25 this section, or a manufacturer who manufactures a mercury
26 switch or relay for which a person who sells that product has
27 applied for an exemption pursuant to this section, shall pay a fee
28 set by the department to pay for the costs of reviewing and
29 approving the exemption filed by the manufacturer, or by the
30 person who sells that product. The department shall set the fee at
31 a level that is reasonably related to the actual costs incurred by
32 the department in conducting the review, in accordance with all
33 of the following:

34 (A) On or before March 1, 2006, the department shall submit
35 a fee proposal to the Department of Finance. The Department of
36 Finance shall review the fee proposal to determine whether the
37 fee fairly represents the department’s actual costs and shall
38 respond with the results of this review within 30 days after
39 receiving the fee proposal. If the Department of Finance does not

1 *respond within 30 days after receiving the fee proposal, the fee*
2 *shall be deemed adopted.*

3 *(B) If the fee is rejected by the Department of Finance, the*
4 *department and the Department of Finance shall meet within 30*
5 *days of the denial and either adopt a new fee or affirm the*
6 *original fee submitted by the department.*

7 *(C) The department shall not grant an exemption pursuant to*
8 *this section until the Department of Finance provides a written*
9 *confirmation to the department that the fee is reasonable*
10 *pursuant to subparagraph (A), the fee is deemed adopted*
11 *pursuant to subparagraph (A), or a fee is adopted or affirmed*
12 *pursuant to subparagraph (B).*

13 *(b) The department shall deposit the fee revenues received*
14 *pursuant to this section in the Hazardous Waste Control Account*
15 *and may expend the fee revenues, upon appropriation by the*
16 *Legislature, to review and approve exemption requests pursuant*
17 *to this section.*

18 *(c) The department may grant an exemption pursuant to this*
19 *section, with any modification or condition deemed necessary by*
20 *the department, for a mercury switch or mercury relay, if the*
21 *department makes both of the following findings:*

22 *(1) The department finds that a system exists for the proper*
23 *collection, transportation, and processing of the product that*
24 *contains the mercury switch or mercury relay at the end of its*
25 *useful life. This system may include, but is not limited to, a direct*
26 *return of a waste product to the manufacturer, an industry or*
27 *trade group supported collection and recycling system, or*
28 *another similar private or public sector effort.*

29 *(2) The department finds both of the following criteria are*
30 *met:*

31 *(A) The use of the mercury switch or mercury relay is*
32 *protective of public health, public safety, and the environment.*

33 *(B) There is no technically feasible alternative to the use of*
34 *mercury in the switch or relay that is available at a reasonable*
35 *cost.*

36 *(d) Before issuing an exemption pursuant to this section , the*
37 *department shall consult with other states to promote*
38 *consistency. The department shall avoid, to the extent feasible,*
39 *inconsistency in the implementation of this section.*

1 (e) (1) An exemption issued pursuant to this section shall be
2 for a period that does not exceed two years from the date of
3 issuance of the exemption.

4 (2) The department may renew an exemption issued pursuant
5 to this section, upon the reapplication by the manufacturer or a
6 person selling a product containing a mercury switch or mercury
7 relay, upon a finding by the department that the mercury switch
8 or mercury relay meets the eligibility criteria specified in
9 subdivisions (a) and (c) and a finding that the applicant is in
10 compliance with the conditions of the original exemption.

11 (3) The department may renew an exemption one or more
12 times and each renewal may be for a period not longer than two
13 years from the date of renewal of the exemption.

14 25214.8.7. (a) Section 25214.8.4 does not apply to a mercury
15 switch or a mercury relay that contains less than 1 milligram of
16 mercury, is hermetically sealed by the manufacturer, and is
17 intended for industrial use in test and measurement instruments
18 or in systems for monitoring and control applications.

19 (b) The exemption specified in this section applies only if the
20 mercury relay or mercury switch is sold to a person operating in
21 compliance with this chapter.

22 25214.8.8. (a) Section 25214.8.4 does not apply to the resale
23 of an imaging and therapy system utilized for medical diagnostic
24 purposes that includes a mercury switch or relay switch
25 integrated in, and not physically separate from, other
26 components of the larger product, if the mercury switch or
27 mercury relay is manufactured prior to December 31, 2006.

28 (b) The exemption specified in this section applies only if the
29 mercury relay or mercury switch is sold to a person operating in
30 compliance with this chapter.

31 SEC. 2. This act shall become operative only if AB 1415 of
32 the 2005-06 Regular Session of the Legislature is enacted and
33 becomes effective on or before January 1, 2006, and adds
34 Section 25214.8.4 to the Health and Safety Code to prohibit a
35 person from selling, offering to sell, or distributing for
36 promotional purposes in this state, a mercury switch or mercury
37 relay, except as specified in that section.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 *district will be incurred because this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the*
3 *penalty for a crime or infraction, within the meaning of Section*
4 *17556 of the Government Code, or changes the definition of a*
5 *crime within the meaning of Section 6 of Article XIII B of the*
6 *California Constitution.*

7 ~~SECTION 1. Section 42475.4 of the Public Resources Code~~
8 ~~is amended to read:~~

9 ~~42475.4. (a) The board, in consultation with the department,~~
10 ~~shall annually establish, and update as necessary, statewide~~
11 ~~recycling goals for covered electronic waste. In implementing~~
12 ~~this section, the board shall do all of the following:~~

13 ~~(1) Post on its Web site information on the amount of covered~~
14 ~~electronic devices sold in the state in the previous year as~~
15 ~~reported to the board.~~

16 ~~(2) Post on its Web site information on the amount of covered~~
17 ~~electronic waste recycled in the state in the previous year as~~
18 ~~reported to the board.~~

19 ~~(3) Develop and adopt recycling goals, with input from~~
20 ~~manufacturers, retailers, covered electronic waste recyclers, and~~
21 ~~collectors, that reflect projections of covered electronic device~~
22 ~~sales, rates of obsolescence, and stockpiles.~~

23 ~~(b) Nothing in this section authorizes the board to establish~~
24 ~~any recycling rates or dates by which a manufacturer of covered~~
25 ~~electronic devices shall comply with this chapter, or to impose~~
26 ~~any other recycling goal or target on a manufacturer of those~~
27 ~~devices.~~